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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,945	03/19/2004	Kenichi Shimooka	TSM-37	7176

24956	7590	05/31/2006

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EXAMINER
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ART UNIT	PAPER NUMBER
2132	

DATE MAILED: 05/31/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	10/803,945	SHIMOOKA ET AL.
	Examiner	**Art Unit**	
	Venkat Perungavoor	2132	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 May 2006*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *7,9-11,14-17 and 19* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *7,9-11, 14-17,19* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. The Applicant's amendment of Claim 11 has obviated the 35 USC § 101 rejection

    and is thus withdrawn.

2. The Applicant's arguments regarding Claim 7, 9-11, 14-17, 19 are not

    persuasive. As U.S. Patent 5483649 to Kuznestsov et al.(hereinafter

    Kuznestsov) discloses the duplication of the primary volume(see Fig .9 item 32)

    to replicated volume(see Fig. 9 item 122, 126) and a replication stopping

    unit(program discriminator) for stopping upon detection of abnormal behavior see

    Col 14 Ln 3-49. And further the CPU performs the function on the memory of

    primary volumes(32) and replicated volume(122, 126) see Col 14 Ln 12-29 and

    further discloses the swapping and copying of data see Col 18 Ln 30-44.

3. And the Applicant's arguments regarding the reference not being directed to

    storage volume assigned for storing data and replicated volume for storing

    duplicated data of the storage volume is not persuasive. *In Syntex (U.S.A.) LLC*

    V. Apotex Inc., 74 USPQ2d 1823 (CA FC 2005), "Prior art reference teaches

    away from claimed invention if it suggests that developments flowing from its

    disclosures are unlikely to produce objective of invention, and what reference

    teaches person of ordinary skill in art is not limited to what reference specifically

    'talks about' or what is specifically 'mentioned' or 'written' in reference;..."

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

5. Claims 7, 9-11, 14-17, 19, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 5,483,649 to Kuznetsov et al.thereinafter Kuznetsov).

6. Regarding Claim 7, 10, 11, Kuznetsov discloses the data protection apparatus with a computer system having a storage volume(Fig. 1 item 32), a computer for reading/writing data(Fig. 1 item 22), a control unit for controlling communication between storage volume(Fig.1 item 30) and replicated volume see Col 16 Ln 14-16), a event detection unit for detecting event occurrence(Col 6 Ln 20-47 & Fig. 1 item 120A), a replication stopping unit for stop communication between computer and storage volume(Col 5 Ln 36-45 & Col 4 Ln 16-23 & Fig. 1 item 120B & Col 1 1 Ln 42-64), the illegal intrusion detection unit for detecting illegal intrusion(Fig. 1 item 135, 137, 139 & Col 16 Ln 26-Col 17 Ln 9), further the event detection unit(see Fig.' 1 item 120A) receiving the detection of intrusion from illegal intrusion detection unit and the replication stopping unit stops the communication from computer and storage volume(Fig. 1 item 120). And further discloses first, second memory see Col 15 Ln 65- Col 16 Ln 1.

7. Regarding Claim 9, Kuznetsov discloses the computer virus detection unit detecting viruses in storage see Abstract & Col 15 Ln 30-64, event detection unit

receiving detection form computer virus detection unit see Fig. 1 item 120A, and

replication stopping unit to stop communication upon detection of virus see Fig. 1

item 120.

8. Regarding Claim 14, Kuznetsov discloses the data protection apparatus with a

computer system having a storage volume(Fig. 1 item 32), a computer for

reading/writing data(Fig. 1 item 22), a control unit for controlling communication

between storage volume(Fig.I item 30) and replicated volume(see Col 16 Ln 14-

16), a event detection unit for detecting event occurrence(Col 6 Ln 20-47 & Fig. 1

item 120A), a replication stopping unit for stop communication between computer

and storage volume(Col 5 Ln 36-45 & Col 4 Ln 16-23 & Fig. 1 item 120B & Col

11 Ln 42-64), the illegal intrusion detection unit for detecting illegal intrusion(Fig.

1 item 135, 137, 139 & Col 16 Ln 26-Col 17 Ln 9), further the event detection

unit(see Fig. 1 item 120A) receiving the detection of intrusion from illegal

intrusion detection unit and the replication stopping unit stops the communication

from computer and storage volume(Fig. 1 item 120), the alteration detection unit

for detecting the differences between log data see Col 17 Ln 25-43 and further

the use of registers for restoring values see Col 20 Ln 49-65. And further

discloses first, second memory see Col 15 Ln 65- Col 16 Ln 1.

9. Regarding Claim 15, Kuznetsov discloses the delay of time between writing to replicated volume from storage volume see Col 22 Ln 40-63(the use of flip-flops introduces delay).

10. Regarding Claim 16, Kuznetsov discloses the plurality of memories see Col 15 Ln 12-17 & Col 15 Ln 66-Col 16 Ln 1 & Fig. 9 item 126,122, 128, 156; and the switching of writing destination at time intervals see Fig. 9 item 30.

11. Regarding Claim 17, Kuznetsov discloses the transferring of data to another storage see Fig. 9 item 152.

12. Regarding Claim 19 see Claim 14 above and Claim 7 above.

Conclusion

13. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).   A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action.   In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the
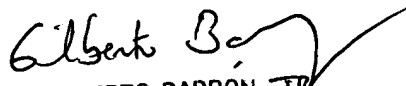
advisory action. In no event, however, will the statutory period for reply expire

later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Venkat Perungavoor whose telephone number is

571-272-7213. The examiner can normally be reached on 8-4:30. If attempts to

reach the examiner by telephone are unsuccessful, the examiner's supervisor,

Gilberto Barron can be reached on 571-272-3799. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

15. Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR

only. For more information about the PAIR system, see http://pair-

direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-

free).

Venkat Perungavoor
Examiner
Art Unit 2132

V/P
5/25/2006

GILBERTO BARRON JR
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